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February 28, 1997

William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: MM Docket No. 95-176/FCC 97-4 - Closed Captioning NPRM

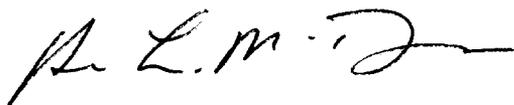
Dear Mr. Caton:

Enclosed please find an original and eleven (11) copies of the Comments of the Direct Marketing Association, Inc. ("DMA") in the above-referenced proceeding. Also enclosed is a 3½ inch diskete containing a read-only version of DMA's comments.

We are also providing one additional copy of the Comments, which we ask that you kindly date-stamp and return to the messenger. We appreciate your assistance.

Please contact me if you have any questions.

Sincerely,



Heather L. McDowell

Enclosures

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FEB 28 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Closed Captioning and Video Description)
of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket No. 95-176

**COMMENTS OF THE
DIRECT MARKETING ASSOCIATION**

The Direct Marketing Association, Inc., ("DMA") is a leading trade organization representing over 3,500 domestic and international corporations and businesses and non-profit organizations involved in all aspects of direct marketing to consumers, including television marketing and new computer technologies like the Internet. Our members market products and services to all consumers groups and categories, including those with impaired hearing.

DMA strongly supports efforts to ensure that hearing impaired individuals have reasonable access to video programming. DMA maintains that mandatory captioning of direct response television advertising -- short- and long-form infomercials and television shopping services -- is not necessary to accomplish this goal. As we show in these comments, submitted in response to the NPRM

in this docket,^{1/} programming in each of these categories supplies all the information a hearing impaired consumer needs to make an informed purchasing decision without the use of captions. Because the cost of mandatory closed captioning would be disproportionate to the benefits achieved, the Commission should, as it is empowered to do by the 1996 Telecommunications Act, exempt all direct response television advertising from its closed captioning rules.

**THE COMMISSION SHOULD EXEMPT ALL FORMS OF
DIRECT RESPONSE ADVERTISING FROM CLOSED
CAPTIONING REQUIREMENTS**

The fundamental purpose of all direct response television advertising is to communicate directly with potential customers through a visual presentation. The audio portion of an advertisement may repeat or augment what is shown on the television screen, but the foundation of a televised direct response offer is the visual presentation of the product or service advertised. Furthermore, direct marketing is consumer-interactive, and relies on immediate and positive consumer reaction. Prospective customers will not have an opportunity to inspect a product in a store before they buy it. As a result, all direct response television advertising must do more than merely intrigue a potential customer; it must provide a comprehensive understanding of the product or service. Direct

^{1/} In the Matter of Closed Captioning and Video Description of Video Programming, _____ FCC Rcd. ____, MM Docket No. 95-165, FCC 97-4 (Adopted January 9, 1997; Released January 17, 1997).

response advertisements are, therefore, carefully crafted with the primary goal of visually informing consumers about every material aspect of the offer.

Infomercials and direct response spot ads visually convey product information in many ways. A typical infomercial for instance, not only displays a product, but also demonstrates its benefits and how it should be used. Each separate component of an offer is displayed on screen when there are multiple parts to an offer, so that consumers can see additional items or premiums (e.g., motivational tapes or instructional booklets). Product performance or results are often presented visually through on-camera use, “before” and “after” pictures, and similar pictorial displays. Textual “bullet points” supplement these presentations by describing product characteristics (e.g., workmanship, construction, contents or ingredients, etc.), or summarizing the highlights of consumer endorsements. Graphic displays such as charts, tables, or diagrams also provide information about a product or service.

Direct response advertising also contains many important disclosures concerning limitations that apply to the advertised item or service. Printed words superimposed at the bottom of the television screen, known in the industry as a “chyron,” provide this information. Moreover, infomercials typically disclose the fact that they are advertisement in text form at the beginning and end of the program, as well as before each ordering opportunity.²

² The Federal Trade Commission previously has taken enforcement action against infomercials that did not include these types of disclosures.

“Ordering screens” are used to supply information concerning price, where to call or write to order, and acceptable payment methods. Depending on the terms of the offer, these screens will also inform consumers about the availability of credit and payment terms, return or refund policies, product or service guarantees, shipping procedures or fees, and limitations on product availability. Finally, advertisements invariably display a toll-free telephone number that viewers can call to order or to obtain more information. Live operators are then available to answer questions or provide information that viewers may have missed or do not remember.. The Commission’s Telephone Relay Service (“TRS”) requirements ensure that this added opportunity to obtain product information is also accessible by people with impaired hearing, and some direct marketers have their own equipment for handling telephone calls from hearing impaired customers.

Because direct response advertising gives viewers all this information through alternative visual representations, closed captioning is not necessary to ensure that hearing impaired viewers are informed about an advertised product or service offered and given an opportunity to make a purchase. Direct response advertising informs consumers based on what they see without captioning; the visual elements of all direct response are already more than adequate to communicate the essential and material terms of the offer.

This conclusion applies to television shopping services as well as long and short form infomercials. Television shopping services air for longer times

than other advertising forms, or even continuously, and are broadcast live. Otherwise these services are no different than other forms of direct response television advertising. The goal of television shopping services is to offer viewers a viable alternative to going to a store to shop. To gain consumers' trust and confidence, television shopping services must provide comprehensive and accurate product information. Accordingly, they focus on displaying the products so that consumers can see them. For instance, models often wear clothing or jewelry, and program hosts show and demonstrate various household items or gifts. Close-ups, or showing the host holding up a product, give viewers a way to judge size and other characteristics that may be prove more meaningful to some viewers than numeric descriptions such as "Size 6" or "20 inches by 48 inches." At the same time, ordering instructions and additional product descriptions are provided in text form on the bottom or side of the television screen (or both).

Certainly, not "all" descriptive information,³ or every single statement made by television shopping program hosts, is displayed in the text portion of television shopping. Conversational statements are not usually reproduced or summarized. While these discussions may enhance program entertainment, they do not convey key product information that is not already depicted visually. Moreover, because television shopping services are broadcast live, and continuously, the "conversational" aspect of the show seems to be precisely the kind of audio information a real-time captioning service would be constrained to

³ NPRM at ¶ 78.

omit in order to keep pace with the program. As is the case with other types of advertising, captions would actually detract from the descriptions viewers get through other means by obscuring either the textual disclosures at the borders of the television screen, or by covering up the pictures of the products themselves. A blurred "text-on-text" display of captions over chyron disclosures would undoubtedly be unreadable, and placing captions over the product images would deprive viewers of a clear view of what they would be buying.

For these reasons, DMA submits that the imposition of mandatory closed captioning on any form of direct response television advertising is simply unnecessary to further the goal of ensuring that hearing impaired individuals have reasonable access to the purchasing opportunities for these forms of television programming offers. On the other hand, because of the unique economic structure of direct response television advertising, the cost of closed captioning requirements would be substantial.

In making this cost-benefit analysis, the Commission must keep in mind that the economics of direct response television advertising are very different than those underlying other types of programming that are under the consideration in this proceeding. In the case of conventional video programming, recovery of production cost does not directly connect with the price of products or services advertised in those programs. Rather, the cost of the video programming is recovered directly through copyright license fees, syndication fees, and in the case of cable and other multi-channel video distribution systems, per subscriber fees. The efficacy of advertising connected

with traditional shows is largely a function of the efficacy of the program itself and, for that reason, conventional advertising is sold on a cost per thousand basis. Moreover, the cost of production of a program series is recovered over the life of the series which, through various forms of distribution, can last for many many years in the case of successful series.

None of this applies to any form of direct response television advertising. Rather, the cost of promotion -- in this case the production of the infomercial or television shopping segment -- can only be recovered directly through the price of the product sold. Because of competitive and other considerations, the profit margins associated with products and services sold to direct response television are narrow to begin with. This is particularly true of low-price consumer products -- such as books, audio and video materials, inexpensive jewelry and clothing, household appliances and tools, and cosmetics. These products are very commonly sold by means of direct response television. Moreover, with very rare exceptions, infomercials and television shopping segments are not long lived.

In short, in the direct response television advertising industry, any increase in cost of production (or promotion) reflects itself directly in the price paid by consumers. The incremental cost in closed captioning infomercials or a television shopping segment would make many products literally unmarketable and, in some cases, unavailable to consumers through any channel of commerce.

DMA does not contend that the cost of closed captioning, by itself, is a sufficient basis for exempting any category of programming from the obligation to

close captions. Plainly, however, the 1996 Telecommunications Act permits -- as the Commission has implicitly recognized -- that a reasoned balancing of benefits derived from closed captioning and cost must be made in determining whether to require closed captioning and that an assessment must be made on a program category basis. Although not explicit, the NPRM implies that this type of cost-benefit analysis requires an exemption for long-and-short form infomercials. For reasons which are unclear, the NPRM suggests that television shopping services should be subjected to mandatory closed captioning rules. As we have shown, this distinction does not withstand scrutiny. In the case of all forms of direct response advertising, including television shopping services, the impact of mandatory closed captioning on the price at which a product is sold is seriously disproportionate to the benefits, in terms of improved access by the hearing impaired, to be realized.

CONCLUSION

For the reasons set forth in these comments, the Direct Marketing Association urges the Commission to categorically exempt all forms of direct response television advertising from mandatory closed captioning requirements.

Respectfully submitted,

Direct Marketing Association
By:



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February 28, 1997